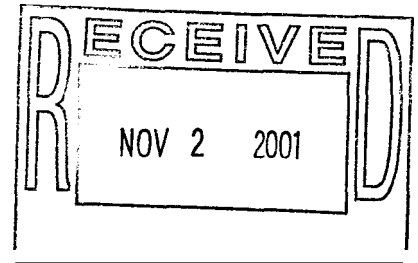




October 31, 2001

National Marine Fisheries Service
Office of Protected Resources
Permits Division (F/PR1)
1315 East-West Highway, Rm. 13705
Silver Springs, MD 20910

RE: National Oceanic and Atmospheric Admin
50 **CFR Part** 216
Docket No. 001031304-0304-01; I.D. 080299B
RIN 0648-AH26
Protected Species Special Exception Permits
Proposed Rule and Request for Comment



Dear Madam/Sir:

Marine Exhibition Corporation **has** been the owner/ operator of the **Miami** Seaquarium since its inception in 1954 and is a member of the Alliance of Marine **Mammal Parks** and Aquariums.

Regarding the proposed rule and request for comment, we wish to offer our specific concerns. We also incorporate by way of reference the comments put forth to you by (the **Alliance/Gesualdi et al**).

As an owner operator of a marine mammal park, the following areas are of particular concern to us:

216.37(e)
Marine Mammal Parts

This paragraph should be expanded to include the import of marine mammal parts not exported **from** the United States **and** allow for importation of such parts **as** semen for breeding through artificial insemination.

.....
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Marine Exhibition Corporation

216.43(a)(4)
Right of inspection

We strongly object to the Proposed Regulations establishing duplicative inspection authority. Congress determined that the Animal and Plant Health Inspection Service would have sole authority over the care and maintenance of animals at public display facilities. Having **NMFS** responsible for enforcing **APHIS'** care and maintenance standards not only is redundant, but also raises concerns about our privacy and consistency during inspections.

216.43(b)(3)(iii) B
General Public Display Requirements

The above referenced section states that “‘ Maintaining’ a facility includes leasing, owning, or otherwise controlling the facility where the marine mammal will be kept;” It appears to us that under this section the definition of who is “ Maintaining” a facility would include the lessor of the real property which is used by the license holder. Thus, the lessor of property to marine mammal facility would fall under of the Marine Mammal Protection Act and the jurisdiction of the National Marine Fisheries Service. We are sure that this is not the intent of the Department and we **request** that this section be modified ~~so~~ that lessors of property and owners of property are excluded.

216.43 (b)(3)(iv)
Capture to present least practical effect

This section would require that the applicant “demonstrate that the proposed capture or importation of living marine **mammals** is one that will present the least practicable effect on wild populations” Although we agree that this is quite noble and should be a goal, but, to make it a requirement is not attainable or verifiable. In order to comply with “practical” the information on the capture from wild populations would have to be gained through practice or action rather than theory, speculation or ideals. “Least practical” is subjective. No applicant could meet the requirements of this section. We request that this subsection (iv) be deleted.

216.43(b)(4)(i)
15-day notice

This subparagraph requires the permit holder to “provide the Office Director 15 days notice in advance of the actual date(s) and location of the capture”. Since **animals** in the wild do not stay in one location, compliance with this requirement would be impossible. The craft being **used** for the capture could very well be at **sea** for more than **15** days **before** it even encounters a potential capture. How then could they give 15 days notice and get a **NMFS** observer on board. We believe that this requirement is simply not doable and that the regulations be modified to **say** that the **fifteen** day notice apply to the period preceding the **initial** departure of the craft and that the permit holder inform **NMFS** periodically of its whereabouts and progress.

216.43(e)(4)(vii)
Stillbirths

Stillbirths should not have to be reported. The marine mammal inventory is a record of ~~marine~~ mammals actually held at a public display facility. It is not necessary to require facilities to report stillbirths since such animals will not become part of the marine mammal inventory.

Sincerely,

Robert E. Rose ,
Curator
Miami Seaquarium